

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

CHRISTOPHER BERNAL,

Petitioner,

v.

CIV 09- 0058 MCA/KBM

JAMES JANECKA, Warden, *et al.*,

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S  
PROPOSED FINDINGS AND  
RECOMMENDED DISPOSITION**

The Magistrate Judge filed her proposed findings on April 9, 2009, recommending that the federal habeas petition, whether characterized as a § 2254 or § 2241 petition, be dismissed as untimely. She also found no basis for equitable tolling. *See Doc. 12.* After the Magistrate Judge filed her proposed findings, Petitioner filed a “reply” to Respondent’s Answer and objections. *See Docs. 13, 14.* I will construe both documents as “objections,” consider them to be timely filed, and have carefully reviewed them *de novo*. *See Garcia v. City of Albuquerque*, 232 F.3d 760, 766-67 (10<sup>th</sup> Cir. 2000).

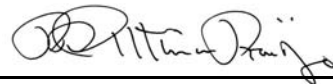
Petitioner maintains that the federal statute of limitations was “subjected to

equitable tolling . . . from the date of conviction [because he] had with due diligence pursued all post-conviction remedies.” *Doc. 13* at 4. He asserts in his objections that the one-year period did not begin to run until the state post-conviction proceedings concluded in 2008. *See Doc. 14* at 2. Petitioner is mistaken about how the federal statute of limitations “finality” and “tolling” periods are calculated. As explained in the Magistrate Judge’s findings, however, Petitioner’s misunderstanding of the law is no basis for equitable tolling.

Wherefore,

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Magistrate Judge’s Proposed Findings and Recommended Disposition (*Doc. 12*) is ADOPTED;
2. The federal petition be dismissed **with prejudice** as untimely; and
3. A final order enter concurrently herewith.



4/29/09

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UNITED STATES DISTRICT JUDGE